IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO.963 OF 2003
IN
SUMMARY SUIT NO.2978 OF 2003

Ami Exports and Agencies Pvt.Ltd. Plaintiff

versus

Manohar G.Soman Defendant

Mr.A.M.Vernekar for plaintiff.

Mr.T.K.Cooper with Ms.Meenaz Merchant i/by Haresh G. Ganatra for defendant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th July 2005

PC :

1. Heard Mr.Vernekar appearing for plaintiff and Mr.Cooper appearing for defendant. Perused the plaint, annexures thereto and affidavits filed in reply, rejoinder and sur-rejoinder.

2. There is a serious doubt as to whether the plaintiffs could recover the sum as claimed in the suit from the defendant, when the plaintiffs themselves are referring to M/s. Phoenix (India) and M/s.Monark Enterprises. The transaction inter-se between Phoenix (India) and M/s.Monark

Enterprises is referred to by the plaintiffs and an explanation in that behalf is given in rejoinder. In view of the statement made on affidavit by the defendant that a sum of Rs.8.00 lakh was paid by M/s.Monark Enterprises to M/s.Phoenix (India) who advanced Rs.20.00 lakh to the defendant and documents have been annexed in that behalf, triable issues arise as to whether the plaintiffs could recover the sum which is balance, admittedly in respect of the loan. Claim of the plaintiff is only for Rs.8.00 lakh and it is contended that Rs.12.00 lakh has been paid by the defendant to them. In the light of the material which is disclosed on affidavits and the annexures to the reply and rejoinder, issue as to whether there was any privity between the plaintiff and defendant arises for consideration. These are triable issues and, therefore, unconditional leave to defend. Suit transferred to the list of commercial causes with usual directions to file written statement, discovery and inspection.

(S.C.DHARMADHIKARI, J.)